## Local Government Mandate Statement Kentucky Legislative Research Commission 2022 Regular Session

## **Part I: Measure Information**

Bill Request #: 211
Bill #:HB 43
Document ID #: 298
Bill Subject/Title: AN ACT relating to religion.
Sponsor: Representative Shane Baker
Unit of Government: X City X County Urban-County Unified Local
X Charter County X Consolidated Local X Government
Office(s) Impacted: All executive offices
Requirement: X Mandatory Optional
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing

## Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

KRS Chapter 39A gives broad powers to the Governor, county judge/executive, mayor, and the chief executive of other local governments to act in a state of emergency. HB 43 would amend KRS 39A.100 to limit the powers of a governmental entity to act during a state of emergency where religious organizations and religious services are concerned. The term "governmental entity" would include the Commonwealth, its agencies and political subdivisions (cities and counties), and any person acting under color of state law.

HB 43 would amend KRS 39A.100 to require that religious services be treated as "essential services" during a state of emergency, necessary to the health and welfare of the public. Neutral health, safety, or occupancy requirements imposed on other organizations and businesses that provide essential services may be imposed on religious organizations so long as the requirements do not impose a substantial burden on a religious organization or its services, unless the requirements in the emergency situation are essential to furthering a compelling governmental interest and are the least restrictive means of furthering that interest.

**Section 1** (6)(a) of the bill would prohibit a governmental entity taking any discriminatory action against a religious organization on the basis that the organization is religious, operates or seeks to operate during a state of emergency, or engages in religious exercise protected by the First Amendment to the United States Constitution. "Discriminatory action" against a religious organization is defined by the bill, in summary, as governmental action to:

- 1. alter the tax treatment of the religious organization;
- 2. disallow a state tax deduction for charitable contributions to the organization;
- 3. impose a monetary fine, fee, penalty, etc. on the organization, or to
- 4. materially alter the terms or conditions of a state contract, entitlement, license or certification issued to the organization.

HB 43 would authorize a religious organization to sue a governmental entity for its violation and would abolish sovereign, governmental, and qualified immunity as a defense to a claim of violation. A successful litigant could recover both monetary and non-monetary compensatory damages, attorneys' fees and costs of litigation.

The bill requires that it be broadly construed to protect the free exercise of religion. Its provisions would supersede any conflicting state or local law that infringes on the free exercise of religion.

The fiscal impact of HB 43 on local governments is indeterminable due to the uncertainty of the number of claims that might arise under it and the outcome of any litigation. Potentially, this legislation could result in more local governments having to expend resources to defend against such claims as well as to pay out money as compensation to a successful litigant. Successful litigation of any sort would likely have a moderate to significant fiscal impact on a local government.

## Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II applies to HB 43 as submitted. There is no prior version for comparison.

**Data Source(s):** Kentucky League of Cities; LRC staff

**Preparer:** Mary Stephens (WB) **Reviewer:** CHM **Date:** 2/23/22